

## **ARTICLE 18**

### **ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES**

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## **ARTICLE 18**

### **ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES**

#### **PART 1     18-100   ADMINISTRATION**

##### **18-101     Enforcement of Ordinance**

1. Unless otherwise specifically qualified, the provisions of this Ordinance shall be enforced by the Zoning Administrator, who shall serve at the pleasure of the Board of Supervisors.
2. In the administration of the provisions of this Ordinance, the Zoning Administrator shall be assisted by the following officers, departments, committees, agencies and boards:
  - A. The Department of Public Works and Environmental Services.
  - B. The boards, commissions, and committees as established in Article 19 or others as may be created by the Board.
  - C. Such additional officers, departments, agencies, committees, and boards of the County, State and Federal governments as shall be specified and referred to under the various Sections of this Ordinance.
3. The Zoning Administrator shall have all necessary authority on behalf of the Board to administer and enforce the provisions of this Ordinance. Such authority shall include the ability to make findings of fact, and conclusions of law with the concurrence of the Office of the County Attorney, in connection with determination of rights regarding nonconforming uses, and further, the ability to order, in writing, the remedy of any condition found in violation of this Ordinance and the ability to bring legal action to insure compliance with the provisions, including injunction, abatement, or other appropriate action or proceeding.

##### **18-102     Duties of the Zoning Administrator**

In the administration of the provisions of this Ordinance, the Zoning Administrator shall have the following specific duties and responsibilities:

1. The receipt, review for completeness and substantial compliance, official acceptance, and maintenance of current and permanent files and records for the following:
  - A. Proposed and adopted amendments to the Zoning Ordinance, to include the Zoning Map.
  - B. Applications for special permits and temporary special permits.
  - C. Applications for special exceptions.
  - D. Appeals of a decision or interpretation.
  - E. Applications for a variance.

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- F. Generalized development plans, conceptual development plans and final development plans and amendments thereto.
  - G. Applications for Building Permits, Residential and/or Non-Residential Use Permits.
  - H. All other applications required by this Ordinance unless otherwise qualified by specific provisions.
- 2. Conduct inspections of buildings, structures and uses of land to determine compliance with the provisions of this Ordinance.
  - 3. Make an annual report to the Planning Commission on the status and effectiveness of the Zoning Ordinance, to include a listing of suggested amendments thereto.
  - 4. Prepare and have available in book, pamphlet and/or map form annually:
    - A. The compiled text of the Zoning Ordinance and all amendments adopted through the preceding year, and
    - B. A zoning map or maps, showing the zoning districts, divisions and classifications in effect during the preceding year.
  - 5. Ensure that there is a supply of copies for public distribution of the zoning map(s), the compiled text of the Zoning Ordinance, and the rules of the BZA and Planning Commission.
  - 6. Make a determination in the case of an alleged conflict between the requirements of this Ordinance and the specifics of a proffered condition accepted by the Board of Supervisors pursuant of Sect. 15.2-2303 of Va. Code Ann. prior to the effective date of this Ordinance. If the Zoning Administrator determines that a conflict exists, the specifics of the proffered condition shall govern; if there is no conflict, the requirements of this Ordinance shall govern. Any such determination shall be appealable as provided for in Par. 10 of Sect. 204 below.
  - 7. Perform such other duties and functions as are required by the provisions of this Ordinance.

### **18-103 Questions of Interpretation**

The Zoning Administrator shall administer and interpret the Zoning Ordinance. Every question involving the interpretation of any provision of this Ordinance shall be presented to the Zoning Administrator for decision. An appeal of any decision of the Zoning Administrator may be taken to the BZA as provided for in Part 3 of this Article, except an appeal of a decision which relates to a proffered condition shall be taken to the Board as provided for in Par. 10 of Sect. 204 below.

### **18-104 Forms for Appeals and Applications**

All appeals and applications as provided for in this Ordinance shall be submitted in writing on forms prescribed by the responsible official, body or committee and approved by the County

## ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

Executive. Each appeal or application shall contain that specific information as may be required by the various provisions of this Ordinance.

### **18-105 Filing of Applications**

Every application required under the provisions of this Ordinance shall be filed with the Zoning Administrator. No application shall be accepted unless it is in accordance with the applicable provisions of this Ordinance and no application shall be officially on file with the County unless and until the application and all required accompanying submissions, with the exception of a development plan, conceptual development plan or generalized development plan, as otherwise provided for in this Ordinance, are submitted to and accepted by the Zoning Administrator. Upon acceptance, an application shall be transmitted to the officer, body or agency having jurisdiction to act on the same, and such official shall promptly notify the Zoning Administrator of the action taken on the application.

### **18-106 Application and Zoning Compliance Letter Fees**

All appeals and applications as provided for in this Ordinance and requests for zoning compliance letters shall be accompanied by a filing fee in the amount to be determined by the following paragraphs unless otherwise waived by the Board for good cause shown; except that no fee shall be required where the applicant is the County of Fairfax or any agency, authority, commission or other body specifically created by the County, State or Federal Government. All fees shall be made payable to the County of Fairfax. Receipts therefore shall be issued in duplicate, one (1) copy of which receipt shall be maintained on file with the Department of Planning and Zoning.

#### **Filing Fee**

1. Application for a variance, appeal, special permit or special exception:

Application for a variance

Residential minimum yard variance; maximum fence height variance in residential districts; modification of location regulations or use limitations for residential accessory structures or uses	\$ 165
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All other variances	\$ 1485
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Appeal under Sect. 18-204 and 18-301	\$ 210
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Application for a:

Group 1 special permit	\$ 2970
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Group 2 special permit	\$ 2970
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Group 3 special permit	
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Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily	\$ 2000
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All other uses	\$ 200
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Group 4 special permit	\$ 740
Group 5 special permit	\$ 2970
Group 6 special permit	\$ 2970
Group 7 special permit	\$ 2970
Group 8 special permit	
All uses approved by the Zoning Administrator	\$ 75
All other uses approved by the BZA	\$ 2970
Group 9 special permit	
Open air produce stand	\$ 330
Accessory dwelling unit	\$ 80
Modification to minimum yard requirements for R-C lots	\$ 35
Modification to the limitations on the keeping of animals; error in building location; modification to permitted extension regulations; noise barriers on a single residential lot	\$ 165
All other uses	\$ 2970
Application for a:	
Category 1 special exception	\$ 2970
Category 2 special exception	\$ 2970
Category 3 special exception	
Child care centers, nursery schools and private schools which have an enrollment of less than 100 students daily; churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of less than 100 students daily.	\$ 200
Churches, chapels, temples, synagogues and other such places of worship with a child care center, nursery school or private school which has an enrollment of 100 or more students daily.	\$2000
All other uses	\$ 2970
Category 4 special exception	\$ 2970
Category 5 special exception	\$ 2970
Category 6 special exception	\$ 2970

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Amendment to a pending application for a special permit, variance or special exception	10 percent of the prevailing application fee
Application for an extension of a special permit or special exception	1/8 prevailing fee
Application to amend a previously approved and currently valid variance	Prevailing fee for new application
Application to amend a previously approved and currently valid special permit or special exception with no new construction	½ prevailing fee
Application to amend a previously approved and currently valid special permit or special exception with new construction	Prevailing fee for new application

**Note:** Additional fees may be required for certain special permit and special exception uses to pay for the cost of regular inspections to determine compliance with performance standards. Such fees shall be established at the time the special permit or special exception application is approved.

When one application is filed by one applicant for two (2) or more special permit uses on the same lot, only one filing fee shall be required. Such fee shall be the highest of the fee required for the individual uses. This shall also apply to an application for two (2) or more special exceptions or two (2) or more variances filed by one applicant on the same lot.

The fee for an amendment to a pending application for a special permit, variance, or special exception is only applicable when the amendment request results in a change in land area, change in use or other substantial revision.

### 2. Application for an amendment to the Zoning Map:

<b>District Requested</b>	<b>Filing Fee</b>
All R Districts	\$4950 plus \$105 per acre
All C, I and Overlay Districts	\$4950 plus \$165 per acre
PRC District	\$4950 plus \$165 per acre
PDH, PDC and PRM District	
Application with conceptual development plan	\$4950 plus \$165 per acre
Application with concurrent filing of conceptual and final development plans	\$4950 plus \$245 per acre

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Final development plan	\$2475 plus \$80 per acre
Amendment to a pending application for an amendment to the Zoning Map	\$825 plus applicable per acre fee for acreage affected by the amendment
Amendment to a pending application for a final development plan or development plan amendment	\$750
Amendment to a previously approved development plan, proffered condition, conceptual development plan or concurrent conceptual/final development plan, with new construction	\$2475 plus applicable per acre fee for acreage affected by the amendment
Amendment to a previously approved development plan, proffered condition, conceptual development plan or concurrent conceptual/final development plan, with no new construction	\$2475
Amendment to a previously approved final development plan with new construction	\$2475 plus applicable per acre fee for acreage affected by the amendment
Amendment to a previously approved final development plan with no new construction	\$2475

**Note:** For purpose of computing acreage fees, any portion of an acre shall be counted as an acre.

The fee for an amendment to a pending application is only applicable when the amendment request results in a change in land area, change in use or other substantial revision.

3. Comprehensive sign plan: \$1500  
Amendment to a comprehensive sign plan: \$750
4. Refund of fees for withdrawal of applications shall be in accordance with the provisions of Sections 112, 208 and 308. There shall be no refund of fees for applications that have been dismissed in accordance with the provisions of Sections 113 and 209.
5. Fees for sign permits and site plans shall be as specified in Article 12 and Article 17, respectively.
6. PRC plan: \$2,400 for each plan submission
7. Zoning compliance letter:
  - Single family: \$50 for each lot requested
  - All other uses: \$150 for each lot requested



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8. Modification to the requirements of the Affordable Dwelling Unit Program \$500

### **18-107 Processing of Applications**

1. Except as qualified by Par. 2 below, all applications and appeals shall, in general, be scheduled and considered in the order in which they are accepted, except that the public hearing date for an application or appeal may be changed by an order of the respective hearing body for a good cause shown. The clerks of the respective hearing bodies shall keep a calendar of cases to be heard in their proper priority.
2. All applications for an amendment to the Zoning Map shall, in general, be scheduled and considered in the order in which the required development plan is submitted. All applications shall be heard and a decision made within twelve (12) months from the date of acceptance of the application, unless:
  - A. The application is the subject of an amendment involving a change in the zoning district requested, a change in the land area or other substantial revision, in which case the application shall be subject to the provisions of Sect. 207 below;
  - B. The required development plan is not submitted within sixty (60) days of the acceptance of the application, in which case, there shall be a revised acceptance date for the application. The revised acceptance date shall be the date of the initial acceptance of the application plus the number of days that the development plan was submitted subsequent to the sixty (60) day deadline, and hearing and decision on the application shall be within twelve (12) months from that revised acceptance date;
  - C. An extended period is mutually agreed to by the applicant and the Board; or
  - D. The applicant refuses or neglects to prosecute an application in accordance with the provisions of this Ordinance.

### **18-108 Limitation on Rehearing**

1. With the exception of an application for an amendment to the Zoning Map, which is regulated by the provisions of Sect. 211 below, if an appeal or application is denied or dismissed by the approving body, no new appeal or application concerning any or all of the same property for the same general use as appealed or applied for originally shall be heard by said approving body for a period less than twelve (12) months from the date of action by the approving body on the original appeal or application unless otherwise waived by the approving body.

Unless otherwise waived by the Board, a special permit application for a church, chapel, temple, synagogue or other such place of worship with a child care center, nursery school or private school of general or special education which is withdrawn by the applicant after commencement of the public hearing before the BZA, or which has been denied, dismissed or approved by the BZA may not be heard by the Board as a special exception for any or all of the same property for the same general use within twelve (12) months of the date of withdrawal, denial, dismissal or approval. Further, unless otherwise waived by the Board, a special exception application for this use which has been withdrawn

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by the applicant after commencement of the public hearing before the Planning Commission, or which has been denied, dismissed or approved by the Board may not be heard by the BZA as a special permit for any or all of the same property for the same general use within twelve (12) months of the date of withdrawal, denial, dismissal or approval.

2. If an application is withdrawn prior to commencement of the public hearing before the BZA or Planning Commission, there shall be no limitation on a rehearing. If an application is withdrawn after commencement of the public hearing before the BZA or Planning Commission, the limitation on rehearing as set forth in Par. 1 above shall apply.

### **18-109 Conduct of Public Hearings**

All public hearings as required by this Ordinance, whether they be conducted by an authorized committee, the Board, the BZA or the Planning Commission, shall be conducted in accordance with the following provisions:

1. No public hearing shall be held unless the required notice for same has been satisfied in accordance with the provisions of Sect. 110 below.
2. All hearings shall be open to the public. Any person may appear and testify at such hearing, either in person or by an authorized agent or attorney.
3. The hearing body shall by general rule prescribe procedures for the conduct of hearings.
4. The Chairman, upon a vote of the majority of members, may continue or defer a hearing.  
If a hearing has been opened and public testimony has been received and there is cause for continuation of the hearing, no formal notice as required by Sect. 110 below shall be required if the hearing is continued to a date certain.  
If a hearing is concluded, but action is deferred until a future date, no formal notice as set forth in Sect. 110 below shall be required prior to action being taken.  
If a hearing has not been opened, and there is cause for deferral of the hearing, written notice to adjacent property owners as required by Par. 4 of Sect. 110 below shall be remailed, except such notice shall be mailed not less than five (5) days in advance of the public hearing. If such notice is sent by the hearing body, it may be sent by first class mail, provided that a representative of the hearing body makes affidavit that the mailing has been made and files the affidavit with the application.
5. Where deemed necessary, it shall be in order to conduct joint public hearings after public notice as set forth in Sect. 110 below. If such joint hearing is held, then public notice need be given by only one (1) hearing body, which shall be the Board in those instances where it is one of the hearing bodies.
6. An action may be reconsidered only upon motion of a member voting with the prevailing side on the original vote. A motion to reconsider must be made at the same or immediately subsequent regular meeting, and may be seconded by any member; provided, however, that an action by the BZA may only be reconsidered prior to the filing of the original decision in the office of the BZA.

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### **18-110 Required Notice for Public Hearings**

No public hearing as required by the provisions of this Ordinance shall be held unless documented evidence can be presented that the following notice requirements have been satisfied.

The subject of the public hearing need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and shall contain a reference to the place or places within the County where copies of the subject of public hearing may be examined.

1. **Publication:** Public notice of any hearing held shall be published once a week for two (2) successive weeks in a local newspaper having general circulation in the County. Such notice shall be published not less than six (6) days nor more than twenty-one (21) days before the date of the hearing, and there shall be a minimum of six (6) days between the first and second publication. The notice shall specify the time and place of the hearing and the nature of the matter before the hearing body. For zoning map amendments, such notice shall also include the information required by Sect. 15.2-2285 of the Code of Virginia. In addition, any amendment which imposes or increases levies or fees shall provide the information as may be required by Sect. 15.2-107 of the Code of Virginia and shall not be adopted unless fourteen (14) days have elapsed following the last required public notice. The public notice shall be the responsibility of the hearing body.
2. **Written Notice to Applicant/Appellant:** For an application for amendment to the Zoning Map, final development plan, special exception, special permit, variance, or appeal as set forth in Part 3 of this Article, the hearing body shall send written notice of the public hearing to the applicant/appellant. Such written notice shall be sent by either first class or certified mail postmarked a minimum of twenty (20) days before the day of the hearing.
3. **Posting:**
  - A. The Zoning Administrator shall, at least fifteen (15) days before the date of the first hearing, post on the land or building involved in any application or appeal as provided for in Part 3 of this Article a notice of the public hearing. Said notice(s) shall be removed no later than seven (7) days after the conclusion of the last hearing to which they pertain. In no instance shall such notice(s) remain for more than seven (7) weeks from the date of the original posting.
  - B. Said notice shall be posted at reasonable intervals along every street abutting the subject property, or, if there is no abutting street, then along the exterior boundary lines of the subject property and within a distance of 300 feet along every street providing access thereto.
  - C. Said notice shall contain the date, location and time of the public hearing, the nature of the proposed request, the property affected, such other information as may be necessary to provide adequate identification of the application, and additionally, where further information on the application may be obtained.
  - D. Said notice may be placed on private property if such is necessary to provide adequate posting.

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- E. For the purpose of distinguishing between hearing bodies, said notices shall be printed on posters of differing colors and posted on yellow signboards in accordance with the following schedule:

<b>Color</b>	<b>Hearing Body</b>
Yellow	Board of Supervisors
Orange	Planning Commission - Any application filed pursuant to the provisions of the Zoning Ordinance
Green	Planning Commission - Site approval for public facility and utility under Sect. 15.2-2232 of the Code of Virginia
Blue	Board of Zoning Appeals

- F. Posting shall not be required when (a) the hearing involves an application for an amendment to the Zoning Map initiated by resolution of intention by the Planning Commission or Board, special exception, special permit, variance, or appeal as provided for in Part 3 of this Article, when such application or appeal involves twenty-six (26) or more parcels of land, or (b) the hearing involves an appeal, as provided for in Part 3 of this Article, concerning no specific property, or (c) the hearing body specifically waives or modifies such requirement.
4. Written Notice to Property Owners: Written notice to property owners and adjacent property owners shall be sent in accordance with the following provisions.
- A. Application for a Zoning Map amendment which involves a change in the zoning classification or a final development plan:
- (1) The applicant shall send written notice to the property owner(s) of each parcel involved in the application; and
  - (2) The applicant shall send written notice to all owners of property abutting and immediately across the street from the subject property. Such notice shall include notice to owners of property abutting and immediately across the street which lie in an adjoining city or county. If such notice does not result in the notification of twenty-five (25) different property owners, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than twenty-five (25) properties.
- B. Application for a special exception:
- (1) The applicant shall send written notice to the property owner(s), if different from the applicant, of each parcel involved in the application; and

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- (2) The applicant shall send written notice to all owners of property abutting and immediately across the street from the subject property. Such notice shall include notice to owners of properties abutting and immediately across the street which lie in an adjoining county or city. If such notice does not result in the notification of twenty-five (25) different property owners, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than twenty-five (25) properties.
- C. Application for special permit, variance, or appeal as provided in Part 3 of this Article:
  - (1) The applicant shall send written notice to the property owner(s), if different from the applicant, of each parcel involved in the application; and
  - (2) The applicant shall send written notice to all owners of property abutting and immediately across the street from the subject property. Such notice shall include notice to owners of properties abutting and immediately across the street which lie in an adjoining county or city. If such notice does not result in the notification of ten (10) different property owners, then additional notices shall be sent to other property owners in the immediate vicinity so that notices are sent to different owners of not less than ten (10) properties.
- D. For all of the above, the following shall also apply; however in all instances, the minimum number of written notices shall be sent as required by Paragraphs 4A through 4C above:
  - (1) If the application property is an individual condominium or cooperative unit within a condominium or cooperative building, written notice shall be provided to:
    - (a) The condominium unit owners' association or proprietary lessees' association; and
    - (b) Unit owners immediately abutting the application property or on the same floor of the building as the application unit and those unit owners immediately above and below the application unit.
  - (2) When the application property is abutting or immediately across the street from a condominium or cooperative property, written notice shall be provided in accordance with the following:
    - (a) When the application property abuts or is immediately across the street from open space or common ground of a condominium or cooperative, the condominium unit owners' association or proprietary lessees' association shall be notified in lieu of the individual unit owners; and

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- (b) Where individual condominium or cooperative units or lots abut or are immediately across the street from the application property, written notice shall be sent to the owner of each such unit.
- E. For Zoning Map amendment applications, final development plan, special exception and special permit applications which propose a change in use or an increase greater than fifty (50) percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions or special permits, when the application property, or part thereof, is located within one-half mile of a boundary of an adjoining county or municipality of the Commonwealth, then in addition to the above, written notice shall also be given by the hearing body, or its representative, at least fifteen (15) days before the hearing to the chief administrative officer, or designee, of such adjoining county or municipality.
- F. In addition to the above, for an amendment application filed on a portion of a property subject to rezoning, final development plan, special exception or special permit approval, written notice shall be provided to all owners of property subject to the rezoning, final development plan, special exception or special permit approval unless the Zoning Administrator determines that such additional notice is not necessary as the proposed change is to one component or one lot which does not affect the rest of the development. Such written notice shall comply with the requirements of this Paragraph with regard to content and timeliness.

All written notice required by this Paragraph shall state the date, time, place and subject matter of the hearing, and the name of the applicant. Such notice shall be sent to the last known address of the owner(s) as shown in the current real estate assessment files and, except as qualified below, shall be sent by certified mail, return receipt requested, and postmarked not less than fifteen (15) days prior to the hearing. Notices sent by a staff agent of the hearing body may be sent by first class mail, provided that the staff agent makes affidavit that the mailing has been made and files the affidavit with the application.

A party's actual notice of, or actual participation in, the proceedings for which the written notice provided by this Paragraph is required shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required by this Paragraph. In addition, any person entitled to notice under this Paragraph may waive the right to such notice in writing.

- 5. Notice for Revocation Hearings: Public hearings for revocation of a special exception or special permit shall be subject to the notice requirements set forth in Paragraphs 1 and 4 above for an application for a special exception or special permit, respectively.
- 6. Additional Notice: The hearing body may by resolution prescribe additional means and forms of notices in connection with any matter falling within its jurisdiction.

### 18-111

#### **Amendment of Applications**

- 1. With the exception of an application for an amendment to the Zoning Map, which is regulated by the provisions of Sect. 207 below, any application may itself be amended if filed prior to forty (40) days before the first public hearing. Such request for amendment shall be made in writing to the Zoning Administrator.

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2. Within forty (40) days of the first public hearing, an amendment to an application may be requested and, based on the nature and extent of the amendment, such request may be due cause to reschedule the public hearing. Such request for amendment shall be made in writing to the Zoning Administrator.

### **18-112 Withdrawal of Application**

1. With the exception of an application for an amendment to the Zoning Map, which is regulated by the provisions of Sect. 208 below, an application may be withdrawn at any time by the applicant or his agent by giving notice in writing to the Zoning Administrator. No fee or part thereof shall be refunded for an application withdrawn by the applicant.  
An application may also be administratively withdrawn by the Zoning Administrator if it is determined that the application was accepted in error. In such cases, there shall be a full refund of the fee paid for filing the application.
2. If an application is withdrawn, there shall be a limitation on rehearing as set forth in Sect. 108 above.

### **18-113 Dismissal of Applications**

If an applicant refuses or neglects to prosecute an application, the Zoning Administrator may, not less than fifteen (15) days after notice of intention to do so, declare an application dismissed. Notice sent by certified mail, return receipt requested, to the applicant at the last known address shall be deemed adequate compliance with this requirement. If an application is dismissed, there shall be no refund of the filing fee.

### **18-114 Permits Not To Be Issued for Structures Which Would Violate Ordinance**

No officer, board, agency or employee of the County shall issue, grant or approve any permit, license, certificate or other authorization for the erection of any building or for any use of any land or building that would not be in full compliance with the provisions of this Ordinance. Any such permit, license, certificate or other authorization issued, granted or approved in violation of any of the provisions of this Ordinance shall be null and void and of no effect without the necessity of any proceedings for revocation or nullification thereof, and any work undertaken or use established pursuant to any such permit, license, certificate or authorization shall be unlawful. No action shall be taken by any officer, board, agency or employee of the County, including the BZA, purporting to validate any such violation.

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### **PART 2      18-200      AMENDMENTS**

#### **18-201      Initiation of Amendments**

The text of this Ordinance and any zoning district boundary shown on the Zoning Map may be amended by the Board, provided that proceedings for any amendment shall be initiated only in the following manner:

1. By the adoption by the Planning Commission of a resolution of intention to propose an amendment; or
2. By the adoption by the Board of a resolution of intention to amend, which resolution, upon adoption, shall be referred to the Planning Commission; or
3. By the filing with the Zoning Administrator of an application by the owners, contract purchasers, or their agents of the land proposed to be rezoned, which application shall be sworn to under oath or affirmation and acknowledged before a notary public.

#### **18-202      Submission Requirements**

All applications for amendments to the Zoning Map, initiated in the manner prescribed by Par. 3 of Sect. 201 above, except as qualified below, shall be filed with the Zoning Administrator and shall include the following information:

1. Four (4) copies of an application on forms provided by the County, completed and signed by the applicant.
2. Four (4) copies of a certified plat of the subject property containing the following information:
  - A. Boundaries of the entire property, with bearings and distances of the perimeter property lines, and of each existing and proposed zoning district.
  - B. Total area of property and of each existing and proposed zoning district presented in square feet or acres.
  - C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat.
  - D. Location of all existing buildings and structures.
  - E. Names and route numbers of all boundary roads or streets, and the width of existing right(s)-of-way.
  - F. Seal and signature of person preparing the plat.
3. Four (4) copies of a legal description of the property, including metes and bounds of each zoning district proposed.



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4. One (1) copy of the current Fairfax County Zoning Section Sheet(s) covering the area of the application, at a scale of one inch equals five hundred feet (1" = 500'), showing:
  - A. Boundaries of the subject property outlined in red.
  - B. Major thoroughfare access to the property and any known plans for future widening as indicated in the adopted comprehensive plan or a plan prepared by the Virginia Department of Transportation.

If more than one (1) Zoning Section Sheet is required to cover the subject property, such sheets shall be attached so as to create an intelligible map.

5. For all applications proposing residential development, five (5) copies of a map identifying classification of soil types at a scale not less than one inch equals five hundred feet (1" = 500'), based upon the County of Fairfax Soils Identification Maps.
6. For all applications, to include an application initiated under Par. 1 or 2 of Sect. 201 above, an affidavit, as presented on an affidavit form approved by the Board of Supervisors and provided by the County, completed, signed by the applicant or the applicant's authorized agent and notarized, including a statement indicating whether or not a member of the Board or Planning Commission, or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership in stock in a corporation owning such land, or through an interest in a partnership owning such land. If the applicant's agent completes the application or affidavit on the applicant's behalf, a certified statement from the applicant must be submitted showing the agent's authorization to act in such capacity.

Prior to each public hearing on the application, the applicant shall reaffirm the affidavit required by this Paragraph in accordance with the reaffirmation procedure outlined on the affidavit form approved by the Board of Supervisors and provided by the County.

Additionally, for developments which are subject to the provisions of Part 8 of Article 2, the owner and/or applicant shall submit an affidavit which shall include:

- A. The names of the owners of each parcel of the sites or portions thereof at one location, as such terms are defined in Par. 1 of Sect. 2-802; and
  - B. The Fairfax County Property Identification Map Number, parcel size and zoning district classification for each parcel which is part of the site or portion thereof.
7. An application filed by an agent, contract purchaser or lessee shall include a notarized written statement signed by the property owner indicating endorsement of the application.
8. Six (6) copies of an environmental assessment/impact statement as required by the provisions of Part 5 below.
9. Four (4) copies of a written statement of justification, dated and signed.
10. If the proposed amendment is for a rezoning to an R, C or I district, twenty-three (23) copies of a generalized development plan, certified by a professional engineer, architect,

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landscape architect or land surveyor authorized to practice as such by the State, including any resubmissions of the plan and supporting graphics, to be submitted in accordance with the provisions of Sect. 203 below, and to include the information set forth below. One 8 ½" x 11" reduction of the plan, any resubmissions and supporting graphics shall also be submitted. However, the requirement for such development plan may be modified or waived by the Zoning Administrator when it has been determined that (a) such plan is not necessary for the adequate review of the rezoning application, and (b) such development as is proposed upon rezoning is of a nature as not to have a significant adverse impact upon the community or upon the public facilities available to the property.

A generalized development plan, at a scale of not less than one inch equals one hundred feet (1" = 100'), which scale may be modified by the Zoning Administrator based on the nature and/or size of the application, shall show the following:

- A. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plan.
- B. Except for single family detached dwellings, the approximate location and dimensions of all proposed structures and uses, to include the maximum height in feet of all structures and penthouses, and a graphic depiction of the angle of bulk plane, if applicable.
- C. The proposed traffic circulation plan including major streets and major pedestrian, bike and/or bridle paths, and the location of all trails required by the adopted comprehensive plan.
- D. All proposed major open space areas and the approximate location of all proposed community and public facilities.
- E. The proposed plan for all major sanitary sewer improvements and the approximate location and estimated size of all proposed stormwater management facilities and a statement as to the type of facility proposed.
- F. The location of all existing utility easements having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.
- G. A schedule showing the number of parking spaces provided and the number required by the provisions of Article 11.
- H. Existing topography with a maximum contour interval of five (5) feet and a statement indicating whether it is air survey or field run.
- I. A delineation of those general areas that have scenic assets or natural features deserving of protection and preservation, and a statement of how such will be accomplished.
- J. A statement or visual presentation of how adjacent and neighboring properties shall be protected from any adverse effects prompted by the proposed development, to include vehicular access plans and dimensions of all peripheral yards that will be provided.

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- K. A delineation of all existing structures, and an indication of their date of construction if known, and whether they will be retained or demolished.
  - L. A statement setting forth the maximum gross floor area and FAR proposed for all uses other than residential.
  - M. A statement or presentation setting forth the maximum number of dwelling units proposed, and the density and the open space calculations based on the provisions of Sections 2-308 and 2-309.
  - N. A statement of those special amenities that are proposed within the development.
  - O. A statement of the public improvements, both on and off-site, that are proposed for dedication and/or construction, and an estimate of the timing of providing such improvements.
  - P. A statement setting forth the proposed approximate development schedule.
  - Q. Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the approximate delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan, and, if applicable, the distance of any existing and proposed structures from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.
  - R. Any proposed improvements to the public right(s)-of-way and delineation of the existing centerline of all streets abutting the property, including dimensions from the existing centerline to the edge of the pavement and to the edge of the right-of-way.
  - S. A plan showing limits of clearing, proposed landscaping and screening in accordance with Article 13, and a delineation of existing vegetation, to include existing vegetation to be preserved, and when there is 2500 square feet or more of land disturbing activity, an existing vegetation map.
  - T. Approximate delineation of any grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact the burial site.
  - U. A statement which confirms the ownership of the subject property, and the nature of the applicant's interest in same.
- 11. A statement explaining the relationship of the development to and compliance with the development criteria of the adopted comprehensive plan of the County.
  - 12. A listing, if known, of all hazardous or toxic substances as set forth in Title 40, Code of Federal Regulations Parts 116.4, 302.4 and 355; all hazardous waste as set forth in Virginia Department of Environmental Quality Hazardous Waste Management Regulations; and/or

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petroleum products as defined in Title 40, Code of Federal Regulations Part 280; to be generated, utilized, stored, treated, and/or disposed of on site and the size and contents of any existing or proposed storage tanks or containers.

13. A statement that the proposed development conforms to the provisions of all applicable ordinances, regulations and adopted standards or, if any waiver, exception or variance is sought by the applicant, such shall be specifically noted with the justification for such modification.

If the proposal includes the request for a waiver of the yard regulations for yards abutting certain principal arterial highways and railroad tracks pursuant to Sect. 2-414, a study showing projected noise impacts, proposed mitigation measures and the effectiveness of such measures shall be submitted.

14. Any additional information that the applicant may desire to proffer in the consideration of the application.
15. Where applicable, any other information as may be required by the provisions of Article 7.
16. If the proposed amendment is for a rezoning to a P district, twenty-three (23) copies of a development plan as provided for in Article 16.
17. An application fee as provided for in Sect. 106 above.

### **18-203 Generalized Development Plan Regulations**

Generalized development plans as required by Par. 10 of Sect. 202 above shall be subject to the following regulations:

1. A generalized development plan shall be filed with an application for rezoning. A generalized development plan not filed with the initial submission of the application shall be submitted within sixty (60) days of the acceptance date of the application. Failure to meet this requirement shall change the acceptance date of the application pursuant to Sect. 107 above, may be due cause to delay the processing of the application in accordance with Sect. 107 above, and may be due cause to dismiss the application in accordance with Sect. 209 below. All data shall be submitted in writing and by use of demonstrative materials necessary to present a clear and complete description of the application, and such data shall be filed with the Zoning Administrator.
2. All written statements, and all plans, profiles, elevations and other illustrative materials shall be filed in twenty-three (23) copies. Plans, profiles, elevations and other illustrative materials shall be presented on a sheet having a maximum size of 24" x 36". If presented on more than one (1) sheet, match lines shall clearly indicate where the several sheets join. The sheet size of a generalized development plan may be modified by the Zoning Administrator, based on the nature and/or size of the application.
3. All statements, plans, profiles, elevations, and other demonstrative materials shall become part of the record of the hearing on the application for an amendment to the Zoning Map.

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Any model must be accompanied by 8" by 10" clear photographs showing a top view, an isometric view and each side of the model.

4. Any statement, plan, profile, elevation or other demonstrative material which is submitted with a rezoning application and which is to be a proffered condition shall be identified as such by a written statement to that effect signed by the applicant and the owner, to include contract purchaser.

### **18-204 Proffered Condition Regulations**

Proffered conditions shall include written statements, development plans, profiles, elevations, and/or other demonstrative materials proffered in accordance with the provisions of Par. 4 of Sect. 203 above and approved by the Board in conjunction with the approval of an amendment to the Zoning Map. Proffered conditions shall be subject to the following procedures and regulations:

1. Once conditions to be proffered are signed and made available, and the public hearing before the Board has commenced, no change or modification to any condition shall be made and no additional conditions shall be proffered at that public hearing. If modified or additional conditions are proposed, a second public hearing before the Board shall be held before the application and the modified or additional conditions can be approved. Such application may also be the subject of a second public hearing before the Planning Commission.
2. If the amendment to the Zoning Map is adopted subject to the conditions proffered by the applicant as set forth above, then the property in question shall be appropriately annotated on the Zoning Map and all other land records referencing the conditions as adopted.
3. Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.
4. Upon approval, any site plan, subdivision plat or development plan thereafter submitted for the development of the property in question shall be in substantial conformance with all proffered conditions and no development shall be approved by any County official in the absence of said substantial conformance.
5. Notwithstanding the provisions of Part 4 of Article 1, minor modifications to the proffered conditions may be permitted when it is determined by the Zoning Administrator that such are in substantial conformance with the proffered conditions and that such: are in response to issues of topography, drainage, underground utilities, structural safety, layout, design, vehicular circulation, or requirements of the Virginia Department of Transportation or Fairfax County; or are accessory uses; or are accessory structures or minor building additions as permitted by Par. 5A(6) or 5B(6) below.
  - A. For proffered rezonings for all uses, other than churches, chapels, temples, synagogues and other such places of worship (hereinafter places of worship) or places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:

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- (1) Permit a more intensive use from that approved pursuant to the proffered conditions; or
  - (2) Result in an increased parking requirement, except for any additional parking which may be required for any building additions or modifications permitted under Par. 5A(6) below; or
  - (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
  - (4) Reduce the effectiveness of approved transitional screening, buffering, landscaping or open space; or
  - (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
  - (6) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use and minor additions to buildings may be permitted, provided that the sum total of all such structures or additions shall not exceed the following:
    - (a) five (5) of the approved gross floor area or 500 square feet of gross floor area, whichever is less, when the total gross floor area shown on the proffered development plan is less than 50,000 square feet; or
    - (b) one (1) percent of the approved gross floor area when the total gross floor area shown on the proffered development plan is 50,000 square feet or more; or
    - (c) 250 square feet of gross floor area of accessory storage structure uses when the total gross floor area shown on the proffered development plan is 10,000 square feet or less; and
    - (d) the maximum permitted density; or
    - (e) the maximum permitted FAR for the zoning district in which located.
- B. For proffered rezonings for places of worship and places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:
- (1) Permit an expansion of the hours of operation from that approved pursuant to the proffered conditions; or
  - (2) Permit an increase in the number of seats, parking spaces or students, if applicable, which exceeds more than ten (10) percent of the amount approved pursuant to the proffered conditions; or

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- (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
  - (4) Reduce the effectiveness of approved transitional screening, buffering, and landscaping or open space; or
  - (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
  - (6) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:
    - (a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet of gross floor area, or five (5) percent of the approved gross floor area up to a maximum of 2500 square feet of gross floor area; and
    - (b) the maximum permitted FAR for the zoning district shall not be exceeded.
- C. For all proffered rezonings, any request for an addition shall require the provision of written notice by the requester in accordance with the following:
- (1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
  - (2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester affirming that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and the Tax Map references for all parcels notified. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

When it is determined by the Zoning Administrator that a modification is not in substantial conformance with the proffered conditions, such modification shall require the resubmission and amendment of the proffered conditions in accordance with the provisions of Par. 6 below.

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Notwithstanding the above, any modification to a proffered condition to provide an accessibility improvement shall be permitted and shall not require approval of a proffered condition amendment.

6. Once conditions have been approved, and there is cause for an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. An amendment application may be filed on a portion of the property subject to proffered conditions, upon a determination by the Zoning Administrator that the amendment (a) would not adversely affect the use of the property subject to the proffered conditions but not incorporated into the amendment application, (b) would not inhibit, adversely affect, or preclude in any manner the fulfillment of the proffered conditions applicable to the area not incorporated into the amendment application, and (c) would not increase the overall approved density/intensity for the development. Previously approved proffered conditions which are not subject to the amendment request shall remain in full force and effect. If the amendment concerns an approved generalized development plan, such application shall include the submission requirements for a generalized development plan set forth in Sect. 202 above, except the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the generalized development plan amendment application. Such amendment shall be the subject of public hearing in accordance with the provisions of Sect. 205 below.
7. The Zoning Administrator shall be vested with all necessary authority on behalf of the Board to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to insure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in Part 9 of this Article.
8. The Zoning Administrator, or his agent, may require a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffered conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.
9. Failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any permits, Building Permits, Residential and Non-Residential Use Permits as may be deemed appropriate by the Zoning Administrator.
10. Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board. Such appeal shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Clerk to the Board and a notice and filing fee as provided for in Sect. 106 above with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal.



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All applications or resolutions to amend the Zoning Ordinance or the Zoning Map shall be subject to a public hearing before the Planning Commission and Board of Supervisors in accordance with the provisions of Sections 15.2-107, 15.2-2204 and 15.2-2285 of the Code of Virginia.

### **18-206 Report by Planning Commission**

1. After the conclusion of the Planning Commission public hearing and deliberations, the Planning Commission shall report to the Board its recommendation with appropriate explanatory material on the proposed amendment.
2. The Planning Commission need not confine its recommendation to the proposed amendment as set forth in the application/resolution. If the proposed amendment consists of a change in the text of the Ordinance, it may recommend a revision to the proposal. If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends be rezoned or it may recommend that the land be rezoned to a different zoning district classification than that requested if, in either case, the Commission is of the opinion that such revision is in accordance with sound zoning practice and is in furtherance of the purposes of this Ordinance; provided that before recommending a larger extent of land or a rezoning to a less restrictive classification than was set forth in the application, the Commission shall hold a further hearing on the matter, after notification has been made in accordance with the provisions of Sect. 110 above.

### **18-207 Amendment of Applications**

1. Any application for an amendment to the Zoning Map may itself be amended by filing a written request for amendment and a fee as provided in Sect. 106 above with the Zoning Administrator.
2. If an amendment is concerned with a change in the zoning district requested, a change in the land area, or other substantial revision, the amendment may be due cause to reschedule the hearing and decision on the application; provided, however, that in no event shall hearing and decision by the Board be later than twelve (12) months from the date of the filing of an amendment unless an extended period is mutually agreed to by the applicant and the Board or unless an applicant refuses or neglects to prosecute an application in accordance with the provisions of this Ordinance.

### **18-208 Withdrawal of Applications**

Any application for an amendment may be withdrawn at any time by the applicant or his agent by giving notice in writing to the Zoning Administrator. If the request for withdrawal is made prior to the submission of a development plan, generalized development plan or conceptual development plan, the Zoning Administrator shall refund all except twenty-five (25) percent of the fee paid for filing the application. No fee or part thereof shall be refunded once such development plan has been submitted.

An application may also be administratively withdrawn by the Zoning Administrator if it is determined that the application was accepted in error. In such cases, there shall be a full refund of the fee paid for filing the application.

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### **18-209 Dismissal of Applications**

If an applicant refuses or neglects to prosecute an application or fails to submit a development plan, generalized development plan or conceptual development plan in accordance with the requirements of this Ordinance, the Zoning Administrator may, not less than fifteen (15) days after notice of intention to do so, declare an application dismissed. Notice sent by certified mail, return receipt requested, to the applicant at the last known address shall be deemed adequate compliance with this requirement. If an application is dismissed, there shall be no refund of the filing fee.

### **18-210 Effective Date of Amendment**

An amendment to the Zoning Ordinance or the Zoning Map shall become effective on the date of Board approval, unless otherwise specified by the Board.

### **18-211 Limitation on Rehearing**

1. If an application for an amendment to the Zoning Map is denied or dismissed by the Board, no further application initiated pursuant to Par. 1 or 3 of Sect. 201 above, concerning any or all of the same property for amendment to the same general zoning classification as applied for in the original application shall be heard for a period of twelve (12) months from the date of action by the Board on the original application unless otherwise waived by the Board.
2. If an application for an amendment to the Zoning Map is withdrawn prior to commencement of the public hearing before the Planning Commission, there shall be no limitation on a rehearing. If an application is withdrawn after commencement of the public hearing before the Planning Commission, the limitation on rehearing as set forth in Par. 1 above shall apply, unless the Board waives same.
3. The term 'general zoning classification' as used in this Section shall mean any one of the following classifications:

Classification 1	R-A through R-4 Districts and PDH-1 through PDH-4 Districts
Classification 2	R-5 through R-MHP Districts, PDH-5 through PDH-40 Districts and PRM District
Classification 3	All C Districts and PDC District
Classification 4	All I Districts
Classification 5	PRC District
Classification 6	All Overlay Districts

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### **PART 3     18-300     APPEALS**

#### **18-301     Initiation**

Any person aggrieved or any officer, department, board, commission or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such decision to the BZA, except an appeal which relates to a proffered condition shall be taken to the Board as provided for in Par. 10 of Sect. 204 above.

#### **18-302     Authorization**

The Zoning Administrator shall administer and interpret the Zoning Ordinance. The BZA shall hear and decide all cases of appeal by persons as set forth in Sect. 301 above. The BZA shall also hear and decide applications for interpretation of any district boundary if uncertainty remains after application by the Zoning Administrator of the rules specified in Sect. 2-204.

#### **18-303     Time Limit on Filing**

Appeals shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Zoning Administrator and the BZA. Such notice shall specify the grounds for such appeal, and shall be filed in accordance with the provisions of Sect. 304 below.

#### **18-304     Submission Requirements**

Every application to appeal shall contain all of the following information:

1. Four (4) copies of an application on forms provided by the County, completed and signed by the appellant. Such application shall not require the execution of an affidavit.
2. Four (4) copies of a statement signed by the appellant setting forth the following information:
  - A. The order, requirement, decision or determination which is the subject of the appeal.
  - B. The date upon which the decision was made.
  - C. The appellant's grounds for the appeal and the reasons therefor. If the appellant is a County officer, department, board or bureau, the statement shall specify how the appellant is affected; otherwise, the statement shall specify how the appellant is an aggrieved person.
3. Such other supportive data as the appellant may desire in the record, including plats, plans, drawings, charts or related material.
4. An application fee as provided for in Sect. 106 above.

#### **18-305     Processing**

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1. Upon receipt of an appeal, the Zoning Administrator shall immediately transmit a copy to the BZA.
2. Prior to the public hearing, the Zoning Administrator shall forward to the BZA copies of the application for appeal and all of the papers constituting the records upon which the decision being appealed was based.
3. The BZA shall process all applications for appeal in accordance with the provisions of Part 2 of Article 19.

### **18-306 Decision on Appeals**

1. The BZA may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
2. The concurring vote of four (4) members of the BZA shall be required to reverse any order, requirement, decision or determination of the Zoning Administrator or any other administrative officer under this Ordinance.
3. The BZA shall render a decision on all applications for appeal within ninety (90) days from the date of acceptance of the application, unless an extended period is mutually agreed to by the appellant and the BZA.

### **18-307 Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the BZA, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the BZA or a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

### **18-308 Withdrawal of Application for Appeal**

An application for appeal may be withdrawn at any time by the appellant or his agent by giving written notice to the Zoning Administrator. No fee or part thereof will be refunded for a withdrawn application.

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### **PART 4     18-400   VARIANCES**

#### **18-401     Initiation**

A property owner, tenant, government official, department, board, or bureau may apply to the BZA for a variance of the strict application of the terms of this Ordinance; provided, however, application shall be made to the Board of Supervisors for a special exception pursuant to those provisions set forth in Part 6 of Article 9.

#### **18-402     Authorization**

1.     Upon initiation as provided for above and upon a determination that the standards of Sect. 404 below are satisfied, the BZA may authorize in specific cases a variance from the strict application of a provision of this Ordinance except as qualified in Sect. 406 below. This authorization shall not be construed to grant the BZA the power to rezone property.
2.     No variance shall be authorized until a public hearing has been held on same in accordance with the provisions of Sect. 109 above.
3.     The concurring vote of four (4) members of the BZA shall be required to authorize a variance.
4.     The BZA shall render a decision within ninety (90) days from the date of acceptance of the application, unless an extended period is mutually agreed to by the applicant and the BZA, or unless an applicant refuses or neglects to prosecute an application in accordance with the provisions of this Ordinance.

#### **18-403     Submission Requirements**

An application for a variance shall be filed in accordance with and shall be subject to the provisions of Part 1 above and shall contain the information set forth below. Upon receipt of a written request with justification, the Zoning Administrator may modify or waive a submission requirement of Par. 2 below, if it is determined that the requirement is clearly not necessary for the review of the application.

1.     Four (4) copies of an application filed on forms provided by the County, completed and signed by the applicant.
2.     Ten (10) copies of a plat, except if the proposal involves a variance of the minimum lot width requirements, in which case twenty-two (22) copies are required, drawn to designated scale certified by a professional engineer, land surveyor, architect or landscape architect licensed by the State of Virginia, presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. If the proposal cannot be accommodated on one 24" x 36" sheet at a scale of 1" = 50', a scale of not less than 1" = 100', or larger may be used. If presented on more than one (1) sheet, match lines shall clearly indicate where the several sheets join. Notwithstanding the above, for a variance to the minimum yard requirements for a dwelling, ten (10) copies of a plat shall be submitted and presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction. Such plat shall be drawn to a designated scale of not less than one inch

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equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development and such plat shall be certified as noted above.

All such plats shall contain all the following information:

- A. Boundaries of entire property, with bearings and distances of the perimeter property lines and of each zoning district.
- B. Total area of the property and of each zoning district in square feet or acres.
- C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and any supporting graphics.
- D. Location of all existing and proposed structures, with dimensions, including height in feet of any structure and penthouse.
- E. All required minimum yards to include front, side, rear, and a graphic depiction of the angle of bulk plane, if applicable, transitional yards, and the distances from all existing and proposed structures to lot lines.
- F. Public right(s)-of-way, indicating name, route number, and width, and where applicable, required and/or proposed improvements to public right(s)-of-way. This requirement shall not be applicable for application to vary the minimum yard requirements for dwellings.
- G. Proposed ingress and egress to the property from a public street(s).
- H. Location of parking spaces, existing and/or proposed, indicating minimum distance from nearest property line(s). This requirement shall not be applicable for applications to vary the minimum yard requirements for dwellings.
- I. Location of well and/or septic field, or indication that the property is served by public water and/or sewer.
- J. The location of all existing public utility easements having a width of twenty-five (25) feet or more, and all major underground utility easement regardless of width.
- K. Approximate delineation of any grave, object or structure marking a place of burial if known, and a statement indicating how the proposed development will impact the burial site. This requirement shall not be applicable to applications to vary the minimum yard requirements for dwellings.
- L. In addition to the above, if the proposal involves a variance of the minimum lot width requirements:
  - (1) Delineation of the existing centerline of all streets abutting the property, including dimensions from the existing centerline to the edge of the pavement and to the edge of the right-of-way.

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- (2) Approximate delineation of any floodplain designated by the Federal Insurance Administration, United States Geological Survey, or Fairfax County, the delineation of any Resource Protection Area and Resource Management Area, and the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan; and
- (3) When there is 2500 square feet or more of land disturbing activity, an existing vegetation map.

M. Seal and signature of professional person certifying the plat.

- 3. One (1) copy of the current Fairfax County Zoning Section Sheet(s) at a scale of one inch equals five hundred feet (1" = 500'), covering the area within at least a 500 foot radius of the property which is the subject of the application, showing the existing zoning classification for all land appearing on the map. If more than one (1) Zoning Section Sheet is required to cover the area, such sheets shall be attached so as to create an intelligible map. The boundaries of the subject site shall be outlined in red thereon.
- 4. Photographs of the property showing existing structures, terrain and vegetation.
- 5. A written statement detailing the specific provision or provisions of the Ordinance from which a variance is sought and the nature and extent of the variance sought. If the proposal includes the request for a variance of the yard regulations for yards abutting certain principal arterial highways and railroad tracks pursuant to Sect. 2-414, a study showing projected noise impacts, proposed mitigation measures and the effectiveness of such measures shall be submitted.
- 6. A written statement of justification which specifically addresses how the application complies with the required standards set forth in Sect. 404 below.
- 7. An affidavit, as presented on an affidavit form approved by the Board of Supervisors and provided by the County, completed, signed by the applicant or the applicant's authorized agent and notarized, including a statement indicating whether or not a member of the BZA or Planning Commission or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership in stock in a corporation owning such land, or through an interest in a partnership owning such land. If the applicant's agent completes the application or affidavit on the applicant's behalf, a certified statement from the applicant must be submitted showing the agent's authorization to act in such capacity.

Prior to each public hearing on the application, the applicant shall reaffirm the affidavit required by this Paragraph in accordance with the reaffirmation procedure outlined on the affidavit form approved by the Board of Supervisors and provided by the County.
- 8. If the applicant is not the owner of the property involved in the application, evidence must be submitted showing that the applicant will have the right to use the property as proposed.
- 9. An application fee as provided for in Sect. 106 above.



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### **18-404 Required Standards for Variances**

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
  - A. Exceptional narrowness at the time of the effective date of the Ordinance;
  - B. Exceptional shallowness at the time of the effective date of the Ordinance;
  - C. Exceptional size at the time of the effective date of the Ordinance;
  - D. Exceptional shape at the time of the effective date of the Ordinance;
  - E. Exceptional topographic conditions;
  - F. An extraordinary situation or condition of the subject property; or
  - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
  - A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
  - B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.

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9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.

### **18-405 Conditions**

Upon a determination by the BZA that the applicant has satisfied the requirements for a variance as set forth in Sect. 404 above, the BZA shall then determine the minimum variance that would afford relief. In authorizing such variance the BZA may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be met.

### **18-406 Unauthorized Variances**

1. No variance shall be authorized that would modify any definition set forth in Article 20.
2. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in the zoning district under the specific provisions of this Ordinance.
3. No variance shall be authorized that would result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
4. No variance shall be authorized that would relate to nonconforming uses.
5. No variance shall be authorized that would reduce the amount of off-street parking space required by Article 11.
6. No variance shall be authorized that would relate to signs.
7. No variance shall be authorized in cases where the applicant, subsequent to the effective date of this Ordinance, has purchased a portion of a larger parcel, which portion has an area or width less than required by the provisions of this Ordinance at the time of such purchase or which portion has unusual physical characteristics (that are set forth as the basis for the application for a variance), which would not exist if such portion had not been detached by such purchase from the larger parcel of which it was a part.

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8. No variance shall be authorized that would permit the establishment of any use not otherwise permitted in a floodplain.

### **18-407 Expiration of a Variance**

1. Whenever a variance is approved by the BZA, the activity authorized thereby shall be established or any construction authorized shall be commenced and diligently prosecuted within such time as the BZA may have specified, or, if no such time has been specified, then within thirty (30) months from the approval date of such variance, unless additional time is approved by the BZA in accordance with Par. 2 below.
2. The BZA may approve a request for additional time, but only in accordance with all of the following:
  - A. A request is filed in writing with the Zoning Administrator prior to the expiration date. Such request shall specify the basis for and the amount of additional time requested and shall include an explanation of why the activity authorized has not been established or construction commenced and diligently prosecuted in accordance with the time specified in the approval of the variance. Such explanation may include the occurrence of conditions unforeseen at the time of variance approval.
  - B. It is determined by the BZA that the variance is in accordance with the required standards for variances, and that approval of additional time is consistent with the public interest.
3. If a request is timely filed, the variance shall remain valid until the request for additional time is acted upon by the BZA; however, during this period the activity authorized shall not be established nor shall construction commence.
4. If the activity or construction has not commenced in accordance with the above provisions, then the variance shall automatically expire without notice.

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### **PART 5    18-500   ENVIRONMENTAL ASSESSMENT/IMPACT STATEMENTS**

**Note:** Provisions are not presented for an environmental assessment/impact statement at this time, and until such provisions have been adopted by the Board of Supervisors, the submission of an assessment/impact statement as set forth in Par. 7 of Sect. 202 above will not be required.

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### **PART 6     18-600   BUILDING PERMITS**

#### **18-601     Permit Required for Erection of Buildings and Structures**

The erection of all buildings and all structures, as well as additions, deletions and modifications thereto, shall be subject to the provisions of Chapter 61 of The Code, Buildings. No building or structure which is required to have a Building Permit pursuant to Chapter 61 of The Code shall be erected until a Building Permit application has been approved by the Zoning Administrator.

#### **18-602     Application for a Permit**

Applications for a Building Permit shall be on forms provided by the County and shall be approved by the Zoning Administrator prior to issuance. An application shall be accompanied by one of the following:

1. An approved site plan, when the building or structure is required to be shown on a site plan that has been approved under the provisions of Article 17 of this Ordinance, and an approved agreement and security package required pursuant to Sect. 17-112 to ensure completion of the physical improvements as shown on the approved site plan, including any revisions thereto, or such plans and agreements as may be required by the Director for the approval of a partial Building Permit pursuant to the Virginia Uniform Statewide Building Code, or
2. When the building or structure does not require site plan approval, four (4) copies of a plat certified by a land surveyor, engineer, landscape architect or architect authorized by the State to practice as such, except that plats submitted for additions to an existing single family detached or attached dwelling or accessory structures related to an existing single family detached or attached dwelling may be prepared by other than a land surveyor, engineer, landscape architect or architect. Each such plat shall indicate the following information:
  - A. The dimensions of the lot or parcel, the lot lines thereof, and the area of land contained therein.
  - B. Delineation of any major underground utility easements and the location of any water, storm and sanitary sewer easements and all conveyances and easements dedicated or to be dedicated to Fairfax County, the State of Virginia and the Virginia Department of Transportation.
  - C. The location, dimensions and height of any building, structure or addition, whether existing or proposed. In addition, for decks, the height of the finished floor above finished ground level and for accessory structures, the height of the highest point of the structure from finished ground level.
  - D. The distance from all property lines to the proposed building, structure or addition, shown to the nearest one-tenth of a foot.
  - E. The proposed elevation of the first floor level and of the lowest floor level of any proposed new building. Such elevations shall not be required for additions unless

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the proposed elevation of the lowest floor level of such addition is below the lowest floor elevation of the structure to which it is added.

- F. The existing and intended use of each building or structure or part thereof, including the number of dwelling units within a dwelling.
  - G. The location and configuration of any existing or proposed off-street parking space(s), the number of spaces proposed to be provided, and information as to the proposed surfacing of such areas.
  - H. The signature and certification number, if applicable, of the person preparing the plat.
  - I. Delineation of any Resource Protection Area and Resource Management Area.
  - J. Such other information with regard to the lot, existing and proposed buildings, and existing and proposed uses thereof and such other information with regard to contiguous lots as may be prescribed by resolution of the Planning Commission and approved by the County Executive as being necessary to the proper enforcement of the provisions of this Ordinance.
  - K. When the Building Permit application is for a new single family detached dwelling, a statement, where applicable, that the lot is subject to the affordable dwelling unit development zoning district regulations.
3. Where applicable, any other information as may be required by the provisions of Article 7.

### **18-603 Limitations on Approval of Building Permits**

- 1. No Building Permit shall be issued for the erection of any building or structure on a lot or addition or modification to a building or structure that is in violation of any of the provisions of Chapter 101, Chapter 116 or Chapter 118 of The Code, this Ordinance, all other applicable laws and ordinances, any proffered conditions, or any development conditions of any approved rezoning, special permit, special exception or variance. Appeals of decisions made pursuant to Chapter 118 of The Code which are appealable shall be processed in accordance with Article 7 of Chapter 118.
- 2. If required by Chapter 104 of The Code, no Building Permit shall be issued for any structure until a Conservation Plan has been approved by the Director in accordance with the provisions of Chapter 104 of the Public Facilities Manual.
- 3. No Building Permit shall be issued for the erection of any building or structure subject to site plan approval as required by the provisions of Article 17 except in strict conformance with such approved site plan and approval of any required agreements under Sect. 17-112. However, buildings or structures exempt from site plan approval in accordance with Sect. 17-104 shall be approved in accordance with the provisions of Sect. 602 above, and partial Building Permits shall be approved in accordance with the Virginia Uniform Statewide

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Building Code and no such partial Building Permit approval shall guarantee the approval of a site plan or subsequent Building Permits.

4. Approval of any Building Permit shall not be deemed to authorize construction within any recorded easement to which the Board of Supervisors or the County of Fairfax is a party.
5. No Building Permit shall be issued for the erection of any building or structure within any major underground utility easement except in conformance with Sect. 2-515.

### **18-604 Enforcement of Performance Standards**

In the enforcement of the performance standards set forth in Article 14, before a Building Permit is issued, the Zoning Administrator may require evidence that the applicant is able to conform to such performance standards. Whereas enforcement shall be the responsibility of the County, where a violation has been established, the Zoning Administrator may:

1. Require the applicant to submit, at the expense of the applicant, reports or the certified results of tests with respect to any current or proposed operation of the use that is involved in relation to conformity to such standards, which reports or test shall be made by a laboratory or other agency of recognized competence.
2. Refer the application to the BZA for a determination of whether or not any operation of the use that is involved conforms to such standards as may call for a conclusion of judgment rather than the application of specified measurement.



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### **PART 7     18-700   RESIDENTIAL AND NON-RESIDENTIAL USE PERMITS**

#### **18-701     Permit Required for Occupancy or Use**

No occupancy or use shall be made of any structure hereinafter erected or of any premises hereinafter improved, and no change in use shall be permitted, unless and until a Residential or Non-Residential Use Permit has been approved in accordance with the provisions of this Part.

A Residential or Non-Residential Use Permit shall be deemed to authorize and is required for both the initial and continued occupancy and use of the building or land to which it applies.

#### **18-702     When Required**

For the purpose of this Ordinance, and in the furtherance of the provisions of Chapter 61 of The Code, Buildings, a Residential or Non-Residential Use Permit, whichever is applicable, shall be obtained from the Zoning Administrator before any person shall:

1.     Occupy or use, or permit or cause to be occupied or used, any building hereafter erected, with the exception of accessory structures as permitted by Article 10 and additions to existing structures which do not require site plan approval.
2.     Change the use, or permit or cause a change in the use, of any existing building.
3.     Occupy or use any vacant land except for an agricultural use.
4.     Make any change in the use of a nonconforming use.
5.     Enlarge any use with respect to the unit of measurement specified in this Ordinance as the basis for determining the amount of required off-street parking space, whether the same is specified in terms of floor area, dwelling units, seats or any other element of size of use.
6.     Continue any use after a change in the proprietorship of such use, except a single family dwelling or an agricultural use.

#### **18-703     Application For a Permit**

1.     Written application for a Residential or Non-Residential Use Permit for any building hereafter erected shall be made at the same time as the application for a Building Permit for such building and a written request for issuance of the same shall be made to the Zoning Administrator after the completion of the work covered by the Building Permit.

If the proposed use is in conformance with the provisions of this Ordinance, all other applicable laws and ordinances, proffered conditions and conditions of special permits or special exceptions, and meets the minimum requirements set forth in Sect. 704 below, the applicable permit shall be issued.

2.     Written application for a Residential or Non-Residential Use Permit for the use of vacant land or for a change in the use of land or a building, for a change of a nonconforming use, for the enlargement of a use or for the continuation of a use, shall be made to the Zoning Administrator.

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If the proposed use is in conformance with the provisions of this Ordinance, of all other applicable laws and ordinances, proffered conditions and conditions of special permits or special exceptions as certified to the Zoning Administrator by the officers, bodies or agencies responsible for the administration thereof, the applicable permit shall be issued.

3. Where applicable, any other information as may be required by the provisions of Article 7.

### **18-704 Minimum Requirements**

The following minimum requirements must be met prior to the issuance of a Residential or Non-Residential Use Permit:

1. The structure must have passed all applicable final inspections such as building, electrical, plumbing, or mechanical inspection.
2. The structure's lot must be final graded. Sodding and/or seeding is required to be complete. An exception may be granted in the winter when seeding, sodding and/or final grading is not possible, or when extraordinarily sustained inclement weather conditions have occurred, and then the lot must be rough graded and completely mulched where disturbed.  
When exceptions for final grading, sodding and/or seeding are granted during the winter, such shall be brought into full conformance no later than the first day of the succeeding month of May.
3. The landscaping and screening requirements of Article 13 or of any approved proffered condition, special permit, special exception or variance must be completed; provided, however, that completion of the requirements may be delayed when justification satisfactory to the Director is provided; such justification shall include an agreement and bond with surety satisfactory to the Director for completion in accordance with a firm schedule for timely completion.
4. Fire hydrants serving the structure must be operative.
5. All walks adjacent to the street and/or between the driveway or parking lot and the structure must be complete. In cases of inclement weather, a substitute, impervious or all-weather surface sidewalk may be provided; however, all such sidewalks shall be brought into full conformance no later than the first day of the succeeding month of May. For the purpose of this provision, an all-weather surface is defined as four (4) inches of crushed stone, properly compacted and maintained.
6. All streets and driveways necessary to provide access for the structure to a public street, and all parking areas in residential developments, must be complete except for a final surface. Streets must have a minimum of a two shot bituminous surface treatment, as required in applicable specifications. When bituminous concrete is required as pavement, the base asphalt courses must be placed. The surface layer may be applied after a Residential Use Permit is issued.

With respect to Residential Use Permits during the period November 1 through April 30, when applicable specifications preclude the use of bituminous concrete and/or

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asphalt, an all-weather surface is acceptable. All-weather surface is defined as six (6) inch crushed stone, properly compacted and maintained. Manholes will be graded so as not to be a hazard to private vehicles and emergency equipment, and to preclude infiltration of surface water. The use of an all-weather surface is considered temporary in nature and should be brought to a properly paved condition as required above as soon as applicable specifications may be met.

During May 1 through October 31, a properly paved surface is required prior to issuance of a Residential Use Permit; provided, however, in instances where the builder cannot meet the requirements for a properly paved street for reasons beyond his control, the Director may waive this requirement for a period not to exceed forty-five (45) days.

7. All storm and sanitary sewers serving the lots for which a Residential Use Permit is requested must be completed and approved.
8. Curb and gutter in front of the structure must be complete and in place.
9. All trails and walkways required by the provisions of Sect. 17-201 must be clearly delineated by stakes, and the minimum of a gravel surface must be in place.
10. Street name signs must be installed and all official building numbers (street addresses) posted.
11. The provisions of Sect. 604 above, in reference to performance standards, must be satisfied before a Non-Residential Use Permit shall be issued.
12. If subject to a Pro Rata Road Reimbursement District established pursuant to Article 3, Chapter 101 of The Code, the reimbursement payment requirements of Section 101-3-11 must be satisfied.
13. For single family detached dwelling units, five (5) copies of an as-built house location survey plat shall be submitted to the Zoning Administrator for review and approval within thirty (30) days of the issuance of the Residential Use Permit. Such plat shall be presented on a sheet having a maximum size of 8 ½" by 14", drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), or a metric scale of 1:500 or larger, unless a smaller scale is required to accommodate the development, with the scale clearly indicated. In all cases, the scale used on the as-built house location plat shall be the same as the scale of the approved house grading plan. Such plat, regardless of the area of the lot, shall be prepared in accordance with the rules and regulations adopted by the Commonwealth of Virginia, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (APELSLA), and shall also show the following:
  - A. The distance from all structures to all lot lines. If metric units are used, their English equivalents shall be provided, with English measurements shown in parentheses.
  - B. For pipestem lots and lots abutting a pipestem driveway, the location of the pipestem driveway.
  - C. The deed book and page number(s) for the easements and conveyances shown on the plat.

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14. If in a floodplain, the provisions of Par. 12 of Sect. 2-905 must be satisfied.

### **18-705 Issuance of Permits When Regulations Change**

1. On written request by the owner, the Zoning Administrator shall issue a Residential or Non-Residential Use Permit for any such use of a building or of land existing at the time of the effective date of this Ordinance or at the time of the adoption of any amendment to this Ordinance which changes the regulations applying to such building or land, certifying after inspection and investigation, the extent and kind of such use and whether the same conforms to the provisions of this Ordinance for the zoning district in which it is situated or whether the same is a nonconforming use based on a finding of fact, and conclusion of law with the concurrence of the Office of the County Attorney.
2. The Zoning Administrator may require such proof as may be necessary to enable a determination to be made in the matter, and the furnishing of such proof shall be a condition of acting on the request.

### **18-706 Permit Not To Validate Any Violation**

No Residential or Non-Residential Use Permit shall be deemed to validate any violation of any provision of any law or ordinance.

### **18-707 Revocation of Permit**

The Zoning Administrator may revoke an approved Residential or Non-Residential Use Permit when it is determined that such approval was based on a false statement or misrepresentation of fact by the applicant, or as provided for in Part 9 below.

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**PART 8** (Deleted by Amendment #94-259, Adopted June 27, 1994, Effective June 28, 1994, 12:01 AM)

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### **PART 9 18-900 VIOLATIONS, INFRACTIONS, AND PENALTIES**

#### **18-901 General Provisions**

1. Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.
2. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Ordinance, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or land in violation of the provisions of this Ordinance shall be subject to the enforcement provisions of this Part.
3. Upon becoming aware of any violation of any provisions of this Ordinance, the Zoning Administrator shall serve a notice of such violation on the person committing or permitting the same, which notice shall require such violation to cease within such reasonable time as is specified in such notice. After such notice is sent and such violation is not ceased within such reasonable time as is specified in the notice, then the Zoning Administrator may proceed to remedy the violation as provided in Sections 902, 903 or 904 below. The Zoning Administrator may also revoke a Residential or Non-Residential Use Permit to terminate the violation.

Any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993 shall include a statement informing the recipient that a right to appeal the notice of a zoning violation or a written order within thirty (30) days may exist in accordance with Sect. 15.2-2311 of the Code of Virginia and Part 3 of Article 18 of the Ordinance, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The appeal period shall not commence until such statement is given.

4. In addition to the remedies provided in Par. 3 above, the Zoning Administrator may initiate injunction, mandamus, or any other appropriate action to prevent, enjoin, abate or remove such erection or use in violation of any provision of this Ordinance. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Ordinance.

#### **18-902 Criminal Violations and Penalties**

1. Any violation of the provisions of this Ordinance, other than those set forth in Sect. 903 below, shall be deemed a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not less than \$10 and not more than \$1000. Failure to remove or abate a zoning violation within the time period established by the Court shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1000, and any such failure during any succeeding ten day period shall constitute a separate misdemeanor offense for each ten day period punishable by a fine of not less than \$100 nor more than \$1500.



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2. The remedy provided for in this Section shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this Ordinance as an infraction pursuant to Par. 1 of Sect. 903 below shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury to any person or persons.

### **18-903      Infractions and Civil Penalties**

1. A violation of the following provisions of this Ordinance shall be deemed an infraction and shall be punishable by a civil penalty of \$100 for the first violation; any subsequent violations arising from the same set of operative facts shall be punishable by a civil penalty of \$150 for each separate offense:
  - A. Conduct of a use, accessory use, and/or home occupation in violation of Par. 5, 6, or 8 of Sect. 2-302.
  - B. Occupancy of a dwelling unit in violation of Sect. 2-502.
  - C. Obstruction of sight distance on corner lots in violation of Sect. 2-505.
  - D. Keeping of animals in violation of Sect. 2-512.
  - E. Conducting an accessory use in violation of Par. 9 or 24 of Sect. 10-102.
  - F. Parking a commercial vehicle in an R district in violation of Par. 16 of Sect. 10-102.
  - G. Location of basketball standard in a front yard in violation of Par. 12C of Sect. 10-104.
  - H. Erection of prohibited signs on private property in violation of Par. 1, 2, 5, 6, 7, 8, 12, 13 or 14 of Sect. 12-104.
  - I. Erection, alteration, refacing or relocation of a sign on private property in violation of Sect. 12-301.
  - J. Occupancy or use of structure without approval of a Residential or Non-Residential Use Permit in violation of Sect. 18-701.
2. Each day during which any violation of the provisions enumerated in Par. 1 above is found to have existed shall constitute a separate offense. However, in no event shall any such violation arising from the same set of operative facts be charged more frequently than once in any ten (10) day period, nor shall a series of such violations arising from the same set of operative facts result in civil penalties which exceed a total of \$3000.
3. The designation of a particular violation of this Ordinance as an infraction pursuant to Par. 1 above shall be in lieu of criminal sanctions, and except for any violation resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.

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4. After having served a notice of violation on any person committing or permitting a violation of the Zoning Ordinance provisions enumerated in Par. 1 above and if such violation has not ceased within such reasonable time as is specified in such notice, then, upon the approval of the County Attorney, the Zoning Administrator shall cause two (2) copies of a summons to be served upon such person.
5. Such summons shall contain the following information:
  - A. The name and address of the person charged.
  - B. The nature of the infraction and the Ordinance provision(s) being violated.
  - C. The location, date and time that the infraction occurred or was observed.
  - D. The amount of the civil penalty assessed for the infraction.
  - E. The manner, location and time in which the civil penalty may be paid to the County.
  - F. The right of the recipient of the summons to elect to stand trial for the infraction and the date for such trial.
6. The summons shall provide that any person summoned for a violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the Department of Finance at least seventy-two (72) hours prior to the time and date fixed for trial and, by such appearance, may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such summons shall provide that a signature to an admission of liability shall have the same force and effect as a judgment of court, however, an admission shall not be deemed a criminal conviction for any purpose.
7. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose.
8. The remedies provided for in this Section are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

### **18-904**

#### **Civil Penalty for Demolition, Razing or Moving of Buildings in Historic Overlay Districts**

1. When a Building Permit is required, the demolition, razing or moving of a building or structure which is located in a Historic Overlay District without the prior approval of the Architectural Review Board and/or the Board of Supervisors as provided in Sect. 7-204 shall be punishable by a civil penalty.
2. Such civil penalty shall not exceed the market value of the property as determined by the assessed value of the property at the time of destruction or removal of the building or structure, and shall include the value of any structure and the value of the real property upon which any such structure was located.

## ADMINISTRATION, AMENDMENTS, VIOLATIONS AND PENALTIES

3. Enforcement under this Section shall be by bringing an action in the name of the County in Circuit Court by the County Attorney, upon request of the Zoning Administrator, and such action shall be brought against the party or parties deemed responsible for such violation. It shall be the burden of the County to show liability of the violator by a preponderance of the evidence.
4. The remedies provided for in this Section are not exclusive and shall be in addition to any other remedies provided by law.